

REMARKS

Claims 1-28 are pending in the present application and stand rejected. No amendments to the Claims 1-28 as originally filed have been submitted herein.

In the Office Action having a Notification Date of January 2, 2008, Claims 1-2, 4-9, 14, 20-21, 25 and 27 are rejected under 35 USC § 103(a) as being unpatentable over US Pat. No. 5,567,860 B1 to Maxwell et al. (hereinafter referred to as "Maxwell") in view of US Pat. No. 5,567,860 B1 to Mohammed (hereinafter referred to as "Mohammed") and further in view of US Pat. No. 6,681,323 to Fontanesi et al. (hereinafter referred to as "Fontanesi"). Claims 3, 21 and 26 are rejected under 35 USC § 103(a) as being unpatentable over Maxwell in view Mohammed, in view of Fontanesi as applied to Claim 2, and further in view of US Pat. No. 6,832,379 to Zeryck et al. (hereinafter referred to as "Zeryck"). Claims 10-13 are rejected under 35 USC § 103(a) as being unpatentable over Maxwell in view Mohammed, in view of Fontanesi as applied to Claim 5 and further in view of US Pat. No. 6,098,097 to Dean et al. (hereinafter referred to as "Dean"). Claims 15-19, 24 and 29 are rejected under 35 USC § 103(a) as being unpatentable over Maxwell in view Mohammed, in view of Fontanesi as applied to Claim 14, and further in view of US Pat. No. 6,934,956 to Allen (hereinafter referred to as "Allen"). Applicants respectfully traverse the foregoing rejections based on the following remarks.

Claims 1-2, 4-9, 14, 20-21, 25 and 27

To establish a *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Moreover, in analyzing the claims, the Claims must be read as a whole, rather than element by element. *In re Gulack*, 703 F.2d 1381, 217 USPQ 401 (Fed. Cir. 1983).

Applicants respectfully submit that the combination of Maxwell, Mohammed and Fontanesi fails to teach or even suggest all of the limitations recited in independent Claims 1, 20 and 25, as is legally required to establish a *prima facie* case of obviousness. The rejection of Independent Claims 1, 20 and 25 is traversed based on the following remarks.

As a basis for the foregoing rejection, it is asserted in the above-referenced Office Action that:

“Maxwell discloses a method of displaying a vendor provided information screen in response to a log-in experience, said method comprising:

providing a screen driver to the OS during the installation (6:5-30);

displaying the information screen (6:5-30).”

Applicants respectfully disagree with all of the above cited assertions. The only way that the above-quoted assertion, that *“Maxwell discloses a method of displaying a vendor provided information screen in response to a log-in experience,”* can be true, it is first *requisite* that Maxwell expressly teach (or at the very least suggest) that a screen driver, provided to the OS during installation of the OS, is executed upon initiation of the log-in experience. It is respectfully submitted that nowhere within the four corners of Maxwell is it taught or even suggested that the information screen that is displayed in response to initiation of a log-in experience (let alone any other displayed screen for that matter), is generated through execution of a driver that was provided to the OS during its installation.

Indeed, the add-device tool of Maxwell is a utility that, under control of a user, facilitates a process of updating/modifying an existing and **already installed** version of the OS through the addition of new device drivers that do not already exist in the installed version of the OS. Nowhere is it taught or even suggested in Maxwell that such a driver be supplied during installation of the OS. This should not be surprising in that the add/device tool disclosed by Maxwell must already have any drivers it requires already provided with the current version of the OS under which it is currently operating. Moreover, any drivers it may provide as a function of its modifying operation will be additions to **the already installed OS**, and are thus provided to the OS **subsequent to its installation, not during**.

Equally requisite for the above-quoted assertion that *“Maxwell discloses a method of displaying a vendor provided information screen in response to a log-in experience* to be true, is that Maxwell expressly teach (or at the very least suggest) that a screen driver, provided to the OS during installation of the OS, is executed upon initiation of the log-in experience. The underlined recitations as found in the rejected claims, and which are left out of the citation above, are part and parcel of the cited function of displaying the information screen as recited in the rejected claims. Applicants respectfully submit that the assertion that the “displaying the information screen” recitation of the rejected claims is met by Maxwell without consideration of the sub-steps that are recited in the rejected claims to comprise that step is contrary to the above-cited legal requirement that a claim be read as a whole when being analyzed for its patentability.

An assertion that the “displaying the information screen” recitation has been met simply because Maxwell discloses that an information screen is displayed is a legally impermissible isolation of that element outside of the rejected claims as a whole. When viewed as part of the rejected claims as a whole, it is clear that the displaying limitation is modified by the sub-element

that is the executing the screen driver upon initiation of the log-in experience claim element. Put another way, the displaying function is a result of the executing function. Maxwell does not teach or suggest that any screen generated by its add-device tool is ever performed as a part of a process of executing the screen driver upon initiation of the log-in experience.

While it has been sufficiently demonstrated above that Maxwell fails to teach or suggest the above-identified limitations, it is respectfully submitted that none of the other references do either, including newly cited reference Mohammed. Consistent with the foregoing, it is conceded in the above-referenced Office Action that

*“Maxwell does not disclose executing the screen driver upon initiation of the log-in experience, said executing the screen driver further comprising:
maintaining visibility of the information screen over subsequently generated display screens until occurrence of a predetermined event; and
completing the log-in experience.”*

Mohammed is then cited as teaching or suggesting the executing and maintaining steps as cited above from the rejected claims, based on the assertion that Mohammed allegedly discloses prompting a user **during an install** for updating a driver. Applicants respectfully disagree with this assertion. First and foremost, it is respectfully pointed out that the user prompt of Mohammed is executed **during or just after a boot up of an already installed OS**, NOT during an installation as alleged. The process disclosed in Mohammed is designed to detect a change in the currently installed version of the OS versus the previously installed version. It is triggered when boot-up of the computer is initiated or upon completion of the boot-up process. This can be seen with reference to steps 102 and 104 of FIG. 2 and the text at Col. 2, Lines 52-63, where the current

version of the OS is retrieved (this is the current version of the OS as is already installed), and where this version is compared to the currently installed platform to see if upgrades are required.

Thus, like add/device tool of Maxwell, Mohammed is designed to add drivers and make other modifications, to software including **an already installed OS**. Any device drivers provided to the OS in either Maxwell or Mohammed are done so **after installation of the OS, not during**. Therefore, the limitation as recited in the rejected claims *providing a screen driver to the OS during the installation* is simply not taught, nor is it suggested by the teachings in any of the cited references. This should not be surprising given that Applicants' invention is not intended to serve the same purpose as those taught in Maxwell or Mohammed. Applicants' invention is intended to alert a user, who has installed the OS, that there are upgrades available to the OS that should be installed that were not incorporated into the original installation medium prior to shipment. The inventions as taught in Maxwell and Mohammed, on the other hand, are intended to make modifications to currently installed versions of the OS necessitated by upgrades already made to the OS or based on the addition of software that the invention detects requires a modification to the already installed OS.

Further in support of traversal, Applicants respectfully submit that while Mohammed does teach an automated invocation of its process, it is in response to a boot-up of the system, NOT in response to a login experience. Moreover, there is simply no suggestion in Mohammed that doing so by modifying its teachings would be advantageous. Indeed, the advantage of performing the process taught in Mohammed at boot-up ensures that it can be performed without interference with other functions, such as would be encountered within the login process. Its purpose is to detect a change in the already installed version of the OS right away, so that it can address any changes that may be necessitated by this OS version upgrade. Applicants' invention does not detect changes

made to the OS, but rather seeks to inform a user logging in after installing the OS that the user has been provided with additional upgrades or enhancements to the OS that didn't make it into the installed version via the primary installation medium, and that those enhancements should be installed.

In contrast with the utility type programs disclosed in Maxwell and Mohammed, Applicants' process is slipped into the OS during its installation so that when the user logs in after installing, the login process is tricked into displaying the information screen upon its initiation. It is a simple and elegant way of modifying the login process during installation of the OS without the user's knowledge, to notify the user that the version of the OS the user just installed has some additional upgrades provided by the system vendor outside of the primary installation medium, and that they should be installed. Applicants' invention is not designed to provide a persistent utility or application that persistently runs on the system for checking whether that OS was in fact upgraded, or to identify and make what modifications as a result, such as that taught in Mohammed. Nor is it a means for making modifications to the installed OS based on the detection of new software that requires drivers that the already installed OS does not have, such as in Maxwell. Indeed, because Applicants' invention is a modification of the login process that is invoked by initiating the login process, it can be easily made to occur just once, such as on the first login experience after installation of the OS.

Thus like Maxwell, the teaching of Mohammed does not disclose or suggest *executing the screen driver upon initiation of the log-in experience*. Moreover, there is no teaching or suggestion in Mohammed (or any of the other cited references) of the element *maintaining visibility of the information screen over subsequently generated display screens until occurrence of a predetermined event*. The complete lack of any teaching regarding this element by

Mohammed (as well as Maxwell) should also be of no surprise. The fact that the invention as taught in Mohammed is invoked upon boot up precludes any need to maintain any user prompt from being buried by subsequently generated screens such as those that would be generated during a login experience. Indeed, the process as taught in Mohammed can be invoked upon completion of boot-up, which means it is the last thing performed and thus the user prompt screen is the last screen generated (if there were any others) during the boot-up process.

Thus, there is a complete lack of any teaching or suggestion within any of the cited combination of references concerning any one of the following limitations as recited in the rejected claims: *providing a screen driver to the OS during the installation, executing the screen driver upon initiation of the log-in experience* (which defines the process of *displaying the information screen* when the rejected claims are read as a whole), or *maintaining visibility of the information screen over subsequently generated display screens until occurrence of a predetermined event*. The lack of any one of these taken alone is sufficient to demonstrate a failure to establish a *prima facie* case of obviousness based on the cited combination, but when taken in combination it is respectfully submitted that the rejection of Claims 1, 20 and 25 has been clearly traversed.

With respect to the recited limitations of Claims 1, 20 and 25 concerning the initiation and completion of an OS, Applicants respectfully point out that it is legally impermissible to view these limitations in isolation. While Fontanesi discloses a method and system for automatically installing an initial configuration onto a computer (1:63-65), which includes the initiating and completing of an installation of an OS, without a teaching in one of the other references that a screen driver be provided to the OS during that particular installation, the mere teaching of an installation of an OS in isolation of the other recitations in the claim fails to cure the deficiencies in the *prima facie* case of obviousness as set forth in detail above.

Likewise, the fact that a login process is typically completed once initiated fails to cure the many other identified deficiencies in the *prima facie* case of obviousness as set forth in detail above. Moreover, such an analysis does not abide by the legal requirement that recited claim elements be read in view of the claim as a whole. While it may be typical that a login process that is initiated completes, it is not necessarily so when that login process is modified by a screen driver that is executed in response to the initiation of that login process, and during which the priority of the generated information screen is maintained until some predetermined event takes place while the login process is proceeding.

Finally, it is respectfully submitted that the failure of the cited combination of references to teach or suggest the numerous recitations as identified above can be further demonstrated by the failure to achieve the Applicants' invention when attempting to combine Maxwell with Mohammed and any of the other cited references. Combining the teachings of Maxwell with Mohammed and Fontanesi (or any of the cited references for that matter) does not come close to yielding Applicants' invention as set forth in Claims 1, 20 and 25. Maxwell discloses an add/device tool by which a user can make modifications to an existing and already installed version of an OS. The user becomes aware that a particular driver is missing from the installed OS, and the add/device tool can be invoked by the user to make the requisite modifications to the OS as currently installed. Mohammed discloses a utility or daemon that can be invoked by a user or which can be automatically invoked upon boot-up of the system. The utility detects that modifications have been made to the installed OS, and then determines what (if any) modifications need to be made to bring the software of the system, such as drivers, up to date in accordance with the new version of the OS. It then initiates these modifications automatically or based on a response to its prompt to a user.

In the case of Mohammed, modifications are identified and based on upgrades already made to the OS as currently installed. In the case of Maxwell, the add/device tool is invoked to create the modifications that need to be made to the already installed OS. The teachings of these references cannot neither be directly combines, nor do they provide the requisite suggestion to modify their combination to provide a means by which a purveyor of systems, that has created and provided upgrades outside of those that exist on the primary OS installation media, can modify the login process during installation of the OS to generate a notification to a user that such upgrades exist. Neither Maxwell nor Mohammed, either individually or combined, provides a driver to the OS during installation of the OS that is not part of the OS already, which when executed can display a reminder screen to the user, let alone that the execution be upon initiation of a login experience and further that the displayed screen be maintained on top of any other screens that would otherwise be displayed as the login experience completes. Moreover, there is no suggestion to modify these teachings, either within their own four corners or within the four corners of any of the other cited references, to achieve those missing elements of the invention as recited in the rejected claims.

With respect to currently pending dependent Claims 2, 4-9, 14, 21 and 27, Applicants respectfully point out that if an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Because Claims 2, 4-9, 14, 21 and 27 depend from one of the independent Claims 1, 20 or 25, in view of the foregoing remarks successfully traversing the rejection of Claims 1, 20 and 25, the rejection of Claims 2, 4-9, 14, 21 and 27 under 35 USC § 103(a) based on the combination of Maxwell, Mohammed and Fontanesi is also traversed.

Claims 3, 21 and 26

With respect to currently pending dependent Claims 3, 21 and 26, Applicants respectfully point out that if an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Because Claims 3, 21 and 26 depend from independent Claims 1, 20 and 25 respectively, in view of the foregoing remarks successfully traversing the rejection of independent Claims 1, 20 and 25, the rejection of Claims 3, 21 and 26 under 35 USC § 103(a) based on the combination of Maxwell, Mohammed, Fontanesi and Zeryck is also traversed.

Claims 10-13

With respect to currently pending dependent Claims 10-13, Applicants respectfully point out that if an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Because Claims 10-13 depend from independent Claim 1, in view of the foregoing remarks successfully traversing the rejection of independent Claim 1, the rejection of Claims 10-13 under 35 USC §103(a) based on the combination of Maxwell, Mohammed, Fontanesi and Dean is also traversed.

Claims 15-19, 24 and 29

With respect to currently pending dependent Claims 15-19, 24 and 29, Applicants respectfully point out that if an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Because Claims 15-19, 24 and 29 depend from one of the independent Claims 1, 20 or 25, based on the foregoing remarks successfully traversing the rejection of independent Claims 1, 20

and 25, the rejection of Claims 15-19, 24 and 29 under 35 USC § 103(a) based on the combination of Maxwell, Mohammed, Fontanesi and Allen is also traversed.

In summary, the combination of all of the cited references fail to teach or even suggest numerous critical recitations of Claims 1, 20 and 25 as set forth in detail above. Moreover, those few limitations that can be demonstrated as being taught by these references can be done so only when taken in isolation of the rejected claims as a whole, which is legally impermissible when determining patentability as set forth in numerous cases including the one cited above. The absence of any one of the limitations recited in Claims 1, 20 and 25 in the teachings of the cited references is sufficient to demonstrate a failure to establish a *prima facie* case of obviousness for purposes of rejecting those claims. Moreover, when one attempts to combine the references as cited, their combination fails to achieve even remotely the functional purpose or result of Applicants' invention as recited in the rejected Claims, and any modifications that would be necessary to such a combination to do so far exceed any that might be suggested by the teachings of those references cited and combined.

Thus, Applicants respectfully submit that the rejection of Claims 1, 20 and 25 for being obvious over the cited references is clearly traversed. While Applicants could demonstrate that numerous additional limitations, as recited in the Claims that depend from Claims 1, 20 and 25, are also not taught or suggested by the cited references, Applicants respectfully point out that there is no need to address them absent the establishment of a legally sufficient *prima facie* case of obviousness with respect to independent Claims 1, 20 and 25.

CONCLUSION

In view of the remarks set forth above, Applicants respectfully request allowance of the pending claims as originally filed. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

Date: March 4, 2008

A handwritten signature in black ink, appearing to be 'RCS', written over a horizontal line.

Robert C. Strawbrich
Reg. No. 36,692
(716) 861-5982

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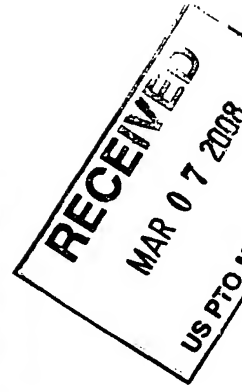
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